

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Marshall Johnson
LeRoy Koppendrayer
Phyllis A. Reha

Chair
Commissioner
Commissioner
Commissioner

In the Matter of the Complaint of McLeodUSA
Telecom Development, Inc. Against Qwest
Corporation Regarding the Payment of
Switched Access Charges

ISSUE DATE: October 14, 2002

DOCKET NO. P-421/C-02-1439

NOTICE AND ORDER FOR HEARING

PROCEDURAL HISTORY

On August 28, 2002, McLeodUSA Telecom Development, Inc. (McLeod) filed a complaint against Qwest Corporation (Qwest). The complaint alleges that Qwest has violated the terms of (i) its interconnection agreement (ICA) with McLeod, (ii) McLeod's tariffs, and (iii) other contractual arrangements with McLeod by improperly routing and recording traffic resulting in a failure to pay intrastate switched access charges to McLeod in the amount of \$90,514.41 (for the period from November 1, 2001 through July 31, 2002). In its complaint McLeod requested an expedited hearing and sought temporary relief pursuant to Minn. Stat. § 237.462, Subd. 7.

On September 12, 2002, Qwest filed its answer requesting that the Commission deny McLeod's request for temporary relief and, after an expedited proceeding that it did not oppose, dismiss McLeod's complaint its entirety, with prejudice.

The Commission met on September 17, 2002 to consider this matter.

On October 13, 2002, the Commission issued its ORDER ASSERTING JURISDICTION, DENYING REQUEST FOR TEMPORARY RELIEF, AND REFERRING MATTER TO OFFICE OF ADMINISTRATIVE HEARINGS.

FINDINGS AND CONCLUSIONS

I. JURISDICTION AND REFERRAL FOR CONTESTED CASE PROCEEDINGS

The Commission has jurisdiction over McLeod's formal complaint under Minn. Stat § 237.081, subd. 1(a) and 237.462, subd. 7 because the complaint raises local service issues involving intrastate tariffs and interconnection agreements. If the Commission finds that a significant factual issue raised has not been resolved to its satisfaction, the Commission shall order that a contested

case hearing be conducted under Chapter 14 unless the complainant, the telephone company (respondent) and the Commission agree that an expedited hearing under Minn. Stat. § 237.61 is appropriate.

The Commission finds that it cannot satisfactorily resolve all questions regarding the issues raised by McLeod and Qwest in this matter on the basis of the parties' filings and oral arguments. For administrative efficiency, the Commission believes that referring the matter to the Office of Administrative Hearings for a contested case hearing is preferable to an expedited hearing under Minn. Stat. § 237.61. The Commission, therefore, will refer the matter to the Office of Administrative Hearings for contested case proceedings pursuant to Minn. Stat. § 237.081, subd. 2 (c).

II. ISSUES TO BE ADDRESSED

Parties shall address the following issues in the course of the contested case proceedings ordered herein:

- (1) The issues raised by McLeod's complaint.
- (2) The issues raised by Qwest's answer.
- (3) The standards for penalties under Minn. Stat. § 237.462 and whether any violation found was "knowing and intentional".

In addition to making findings and recommendations regarding these three categories of issues, the ALJ is also asked to give input, not on a recommended dollar amount of any penalty, but on the credibility of witnesses and the issue of whether any violation found was "knowing and intentional"

III. Procedural Outline

A. Administrative Law Judge

The Administrative Law Judge assigned to this case is Allan W. Klein. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; (612) 341-7609.

B. Hearing Procedure

- *Controlling Statutes and Rules*

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62; the rules of the Office of Administrative Hearings, Minn. Rules, parts 1400.5100 to 1400.8400; and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 117 University Avenue, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at www.revisor.leg.state.mn.us.

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

- *Right to Counsel and to Present Evidence*

In these proceedings, parties may be represented by counsel, may appear on their own behalf, or may be represented by another person of their choice, unless otherwise prohibited as the unauthorized practice of law. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1400.7000, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

- *Discovery and Informal Disposition*

Any questions regarding discovery under Minn. Rules, parts 1400.6700 to 1400.6800 or informal disposition under Minn. Rules, part 1400.5900 should be directed to Kevin O'Grady, Public Utilities Rates Analyst, Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 282-2151; or Karen Hammel, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 297-1852.

- *Protecting Not-Public Data*

State agencies are required by law to keep some data not public. Parties must advise the Administrative Law Judge if not-public data is offered into the record. They should take note that any not-public data admitted into evidence may become public unless a party objects and requests relief under Minn. Stat. § 14.60, subd. 2.

- *Accommodations for Disabilities; Interpreter Services*

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

- *Scheduling Issues*

The times, dates, and places of public and evidentiary hearings in this matter will be set by order of the Administrative Law Judge after consultation with the Commission and intervening parties.

- *Notice of Appearance*

Any party intending to appear at the hearing must file a notice of appearance (Attachment A) with the Administrative Law Judge within 20 days of the date of this Notice and Order for Hearing.

- *Sanctions for Non-compliance*

Failure to appear at a prehearing conference, a settlement conference, or the hearing, or failure to comply with any order of the Administrative Law Judge, may result in facts or issues being resolved against the party who fails to appear or comply.

C. Parties and Intervention

The current parties to this case are the Companies and the Minnesota Department of Commerce. Other persons wishing to become formal parties shall promptly file petitions to intervene with the Administrative Law Judge. They shall serve copies of such petitions on all current parties and on the Commission. Minn. Rules, part 1400.6200.

D. Prehearing Conference

A prehearing conference will be held in this case on Thursday, October 24, 2002 at 1:30 p.m. in the Small Hearing Room, Public Utilities Commission, 121-7th Place East, Suite 350, St. Paul, Minnesota 55101. Persons participating in the prehearing conference should be prepared to discuss time frames, scheduling, discovery procedures, and similar issues. Potential parties are invited to attend the pre-hearing conference and to file their petitions to intervene as soon as possible.

E. Time Constraints

McLeod requested temporary relief in this matter. While the Commission did not find grounds as specified in Minn. Stat § 237.462, subd. 7 to grant the temporary relief requested¹, both McLeod and Qwest have expressed an interest in an expeditious resolution of this matter and the Commission concurs that this would be beneficial.

The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of these expressions.

¹ See the Commission's ORDER ASSERTING JURISDICTION, DENYING REQUEST FOR TEMPORARY RELIEF, AND REFERRING MATTER TO OFFICE OF ADMINISTRATIVE HEARINGS issued in this docket on October 14, 2002.

IV. Application of Ethics in Government Act

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 et seq., apply to general rate cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

V. Ex Parte Communications

Restrictions on ex parte communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

ORDER

1. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.
2. A prehearing conference shall be held on Thursday, October 24, 2002 at 1:30 p.m. in the Small Hearing Room, Public Utilities Commission, 121-7th Place East, Suite 350, St. Paul, Minnesota 55101.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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BEFORE THE MINNESOTA OFFICE OF ADMINISTRATIVE HEARINGS

100 Washington Square Suite 1700
Minneapolis, Minnesota 55401-2138

FOR THE MINNESOTA PUBLIC UTILITIES COMMISSION

121 Seventh Place East Suite 350
St. Paul, Minnesota 55101-2147

In the Matter of the Complaint of McLeodUSA MPUC Docket No.

Telecom Development, Inc. Against Qwest

Corporation Regarding the Payment of

Switched Access Charges

OAH Docket No. P-421/C-02-1439

NOTICE OF APPEARANCE

Name, Address and Telephone Number of Administrative Law Judge:

Allan W. Klein, Office of Administrative Hearings, Suite, 1700, 100 Washington Square,
Minneapolis, Minnesota 55401; (612) 341-7609

TO THE ADMINISTRATIVE LAW JUDGE:

You are advised that the party named below will appear at the above hearing.

NAME OF PARTY:

ADDRESS:

TELEPHONE NUMBER:

PARTY'S ATTORNEY OR OTHER REPRESENTATIVE:

OFFICE ADDRESS:

TELEPHONE NUMBER:

SIGNATURE OF PARTY OR ATTORNEY: _____

DATE: _____